

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)

Truth-in-Billing)
and)
Billing Format)

CC Docket No. 98-170 RECEIVED

NOV 13 1998

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF PETROLEUM COMMUNICATIONS, INC.

Petroleum Communications, Inc. ("PetroCom"), by its attorneys, respectfully submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released on September 17, 1998, in the captioned proceeding.¹

1. Introduction. PetroCom, through its wholly owned subsidiary -- PetroCom License Corporation -- is the A-side cellular radiotelephone licensee (call sign: KNKA411) serving the Gulf of Mexico Service Area ("GMSA"). PetroCom provides commercial mobile radio services ("CMRS") primarily to petroleum companies and petroleum-related companies that operate in the Gulf.

2. In order to promote the principle of fairness in billing, the Commission in the NPRM sets forth three guidelines to govern billing and proposes numerous requirements for the billing formats of telecommunications carriers, including CMRS providers, in furtherance of these guidelines.² The Commission states that the purpose of the guidelines/requirements is "to make telephone bills more consumer-friendly by providing customers with information they need to make informed choices in

¹ In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232 (released Sept. 17, 1998) [hereinafter NPRM].

² NPRM at ¶¶ 6, 10.

No. of Copies rec'd. 074
List ABOVE

a competitive telecommunications marketplace and to protect themselves against unscrupulous practices." The Commission states that there has been a significant increase in consumer complaints arising out of ambiguous telephone bills that fail to provide consumers with essential information in a clear and conspicuous manner. Therefore, the agency is taking a more active role in the billing practices of telecommunication carriers to protect consumers and serve the public interest.

3. The Commission Should Create An Exemption To Any Future Disclosure Requirements For Carriers Primarily Serving Businesses. PetroCom is sympathetic to the concerns raised by the Commission, and it is unfortunate that a few unscrupulous carriers necessitate increasing the regulatory burden on the rest of the carriers who take pains to ensure that their bills fully inform customers as to charges and services performed. PetroCom thus supports the principle of fair billing, but recommends that the Commission not take a one-rule-fits-all approach with telecommunications carriers, especially CMRS providers, in setting disclosure requirements to serve the public interest. Not all consumers need agency protection. Only consumers who are unsophisticated and lack the resources to inform and protect themselves from unfair billing practices need the Commission's protection. Therefore, the Commission should establish an exemption from any future disclosure requirements for carriers who primarily serve business entities or provide telecommunication services to users that are utilizing the service for commercial ends. Such an exemption would be consistent with other regulatory consumer protection schemes that recognize that not all consumers need government protection.

4. Truth In Lending Act ("TILA"). In the NPRM, the Commission stated that it looked to other statutory consumer protection programs in developing its proposals.³ One such program was

³ Id. at ¶ 7.

the TILA.⁴ The purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices."⁵ TILA then sets forth various disclosure requirements applicable to credit transactions. Congress, however, recognized that not all debtors need protection in lending transactions and created an exception to the TILA disclosure requirements. TILA thus exempts certain credit transactions involving the extension of credit primarily for business or commercial purposes and transactions where the total amount financed exceeds \$25,000.⁶ In addition, TILA defines consumer as "the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes."⁷

5. Therefore, TILA only covers credit transactions involving natural persons who are borrowing a non-substantial amount of money for non-commercial use. TILA is thus aimed at protecting unsophisticated consumers who lack knowledge of credit transactions or the incentive or resources to become informed about the terms of credit transactions.⁸ TILA exempts transactions with commercial and business ends and transactions dealing with large sums of money. The rationale is that businesses or people involved in such transactions are more sophisticated and knowledgeable

⁴ Id. at ¶ 8.

⁵ 15 U.S.C. § 1601.

⁶ 15 U.S.C. § 1603.

⁷ 15 U.S.C. § 1602(h).

⁸ See generally H.R. Rep. No. 1040 (1968).

about credit transactions or have more incentive to obtain information before engaging in such transactions. Such people and business entities can protect themselves. Increasing the regulatory burden on creditors in such transactions is undue and not in the public interest.

6. Another example of a consumer protection program that recognizes that government intervention is only necessary to protect unsophisticated individuals is the Federal Trade Commission ("FTC") Credit Practices Rules. These rules only apply to credit transactions involving consumers that are "a natural person who seeks or acquires goods, services, or money for personal, family or household use."⁹ Thus, business entities or natural persons who seek credit for commercial ends are not covered by the FTC's rules.

7. PetroCom primarily serves petroleum and petroleum-related companies that operate in the Gulf. Due to the specialized needs of the industry, PetroCom has customized its billing for individual clients in order to aid its customers with accounting and to provide them with specialized information. PetroCom is not in a position to dictate terms to businesses operating in the Gulf, because its sophisticated users will switch carriers if terms are unfavorable. In addition, many of PetroCom's customers have sufficient resources to establish their own communications system under Part 90 of the Commission's Rules. Thus, in order to be competitive, PetroCom has taken pains to individualize its billing according to the users' demands in order to maintain customer satisfaction. As a result, PetroCom has not received any complaints from customers on its billing practices or formats. Subjecting carriers like PetroCom to the added costs to change its billing software in order to comply with future disclosure requirements will not further the Commission's goal of protecting consumers, because business users are sophisticated and do not require additional protection. Further, customers

⁹ 16 C.F.R. § 444.1(d).

of carriers like PetroCom receive the protection of Section 201(b) of the Communication's Act of 1934, as amended, which requires that the rates and practices of all common carrier's be "just and reasonable."¹⁰ Increasing the operating costs of carriers like PetroCom through mandatory disclosure requirements will not serve the public interest.

8. As with other consumer protection programs, the Commission should create an exemption for carriers serving businesses or providing services to users that are commercial in nature. An exemption could be created that simply makes carriers -- who certify that they primarily serve businesses -- not subject to disclosure requirements. The Commission could thus serve the public interest by requiring disclosures to unsophisticated consumers, while not unduly burdening carriers who primarily sophisticated business users.

¹⁰ 47 U.S.C. § 201(b).

9. Conclusion. For the reasons stated above, PetroCom generally supports the Commission's proposal but suggests that the Commission create an exemption to any future disclosure requirements for carriers that primarily serve businesses.

Respectfully submitted,

PETROLEUM COMMUNICATIONS, INC.

By: 

Richard S. Myers
William R. Layton
Its Attorneys

November 12, 1998

Myers Keller Communications Law Group
1522 K Street, N.W., Suite 1100
Washington, D.C. 20005
(202) 371-0789